



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 27, 1990

Billy Tidwell
Chief of Police
Liberty Police Department
323 San Jacinto
Liberty, Texas 77575

OR90-588

Dear Chief Tidwell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your most recent correspondence to this office was assigned ID# 10972.

The Liberty Police Department received an open records request for the personnel file of a certain city peace officer. You contend that the personnel file comes under the protection of sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act. You have submitted the requested information as Exhibits A through E.


We initially note that this office has previously ruled pages 1 through 4 of Exhibit A are public information. See OR89-350 (1989) (copy enclosed). That open records letter also requested an affidavit attesting to the fact that no other documents pertaining to the internal investigation of the officer existed. This office never received such an affidavit and in fact pages 5 and 6 of Exhibit A, which relate to the investigation, clearly existed at the time of the initial request. Consequently, for the reasons stated in OR89-350, Exhibit A is deemed to be public information and must be released in its entirety except for the information revealing the results of polygraph examinations. See V.T.C.S. art. 4413(29cc), § 19A; but see Open Records Decision No. 565 (1990) (results of polygraph examinations not confidential for purposes of section 3(a)(1) when requested by examinee).

Exhibit B consists of several "Field Training Evaluation" forms containing an evaluator's opinions of the officer's job performance. As such, these forms come under the protection of section 3(a)(11) and may be withheld. See Open Records Decision No. 538 (1990). Exhibits C and E, however, consist of factual material and may not be withheld pursuant to section 3(a)(11), Open Records Decision No. 450 (1986); Exhibits C and E must therefore be released.

Exhibit D is the case report of a citizen's arrest for D.W.I. by the officer in question. You contend that information concerning the results of an intoxilyzer test comes under the protection of section 3(a)(1). You cite no statutory authority that makes this information confidential and this office is aware of none. This office has previously ruled that this type of information does not come under the protection of section 3(a)(1). See Open Records Decision No. 478 (1987) (copy enclosed). We have, however, marked other information in the report that implicates the privacy rights of the D.W.I. suspect and that should be withheld pursuant to the common-law privacy aspect of section 3(a)(1); you must release the remaining information in Exhibit D.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-588.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/le

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ID# 10972
OR89-350

Enclosures: Open Records Decision No. 478
OR89-350
Opinion request letter for OR89-350
Marked documents

cc: Lorraine Adams
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